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*Proposed Attorneys for Lenard E. Schwartzter*

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

<p>In re:</p> <p>MEDIZONE INTERNATIONAL, INC.,</p> <p style="text-align: right;">Debtor.</p>	<p>Case No. BK-S-18-12662-LEB</p> <p>Chapter 7</p> <p><b>TRUSTEE’S EX PARTE APPLICATION TO EMPLOY COUNSEL NUNC PRO TUNC</b></p> <p>(No Hearing Requested)</p>
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Lenard E. Schwartzter (the “Trustee”), the Chapter 7 Trustee appointed in the above-captioned bankruptcy case, respectfully requests that the Court approve the employment of Schwartzter & McPherson Law Firm (“S&MLF”) as counsel for the Trustee *nunc pro tunc* to May 8, 2018, pursuant to section 327(a) of the Bankruptcy Code<sup>1</sup> and Bankruptcy Rule 2014(a). This Application is also based upon the Declaration of Jason A. Imes filed concurrently with this Application and the following Points and Authorities:

**I. JURISDICTION**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**II. CASE BACKGROUND**

Debtor MEDIZONE INTERNATIONAL, INC. (the “Debtor”), filed for relief under Chapter 7 of the Bankruptcy Code on May 8, 2018 (the “Petition Date”), and Chapter 7 panel

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<sup>1</sup> Unless otherwise expressly stated, all Chapter and Section references are to 11 U.S.C. §§ 101-1532 (the “Bankruptcy

trustee Lenard E. Schwartzner was appointed to administer the estate.

### **III. SCOPE OF REPRESENTATION**

S&MLF is composed of attorneys who generally limit their practice to the areas of insolvency, reorganization, related litigation, and bankruptcy law. S&MLF is well qualified to represent the Trustee as his bankruptcy counsel. S&MLF has represented numerous debtors, trustees, creditors, unsecured creditors' committees, and other parties-in-interest, and is well qualified to act as attorneys for the Trustee. S&MLF will serve as general counsel to the Trustee and will provide, without limitation, some or all of the following legal services in this case:

- (a) Advise Trustee with respect to rights, powers, and duties as trustee;
- (b) Assist and advise the Trustee in negotiating, reviewing, drafting documents and pleadings, and any transactions contemplated during this case;
- (c) Assist Trustee with review and resolution of claims asserted against Debtor's estate, including claims objection and claims estimation proceedings;
- (d) Assist with any and all litigation necessary or appropriate to assert rights held by the Trustee or to defend or protect assets of the Debtor's estate;
- (e) Advise and assist the Trustee with actions that he might take to collect and recover property for the benefit of the Debtor's estate;

### **IV. DISINTERESTED PURSUANT TO 11 U.S.C. §101(14)**

To the best of the Trustee's and S&MLF's knowledge, S&MLF is disinterested within the meaning of Section 101(14) of the Bankruptcy Code. S&MLF, its shareholders, counsel and associates:

- (a) are not creditors, equity security holders, or insiders of Debtor;
- (b) are not and were not, within two years before the Petition Date, a director, officer, or employee of Debtor; and
- (c) do not hold an interest materially adverse to the interest of the estate

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Code"), and all Rule references are to Fed. R. Bankr. P., 1001-9037 (the "Rule(s)").

or of any class of creditors or equity holders by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason.

(See Imes Declaration.)

#### **V. DISCLOSURE OF CONNECTIONS PURSUANT TO FRBP 2014(a)**

To the best of S&MLF's knowledge, S&MLF does not represent or otherwise have other connections with the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee in this case, **EXCEPT that Lenard E. Schwartz is the acting Chapter 7 Panel Trustee for this case, appointed by the Office of the United States Trustee, and Mr. Schwartz regularly employs S&MLF to represent him in other unrelated bankruptcy cases in which he is the Trustee. Mr. Schwartz is also a senior partner in S&MLF, but he will not bill as an attorney in this case.** (See Imes Declaration.)

As noted above, S&MLF does not believe S&MLF represents any interest adverse to the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee in this case, or in matters upon which S&MLF will be engaged as counsel in this case. (See Imes Declaration.)

Pursuant to FRBP 2014(a), this application is accompanied by the Declaration of Jason A. Imes. The Declaration constitutes a verified statement and sets forth, to the best of the declarant's knowledge, S&MLF's connections, if any, with the Debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee in this case.

S&MLF will supplement these disclosures in the event further connections are discovered regarding persons or entities that later become identified as appropriate for disclosure.

#### **VI. COMPENSATION ARRANGEMENT**

Subject to Court approval, in accordance with 11 U.S.C. §330, the Trustee seeks to retain S&MLF on an hourly basis at the customary and standard rates that S&MLF charges for similar representation, plus reimbursement of actual and necessary expenses incurred by S&MLF in

1 performing its duties.

2 S&MLF expects that its compensation will be based upon a combination of factors,  
3 including without limitation, experience of counsel, time expended, results achieved, difficulty of  
4 matters undertaken and S&MLF's hourly rates billed at the rate of \$385.00 for Jason A. Imes and  
5 various hourly rates for other counsel and support staff within S&MLF as set forth in **Exhibit "A"**  
6 to the Declaration of Jason A. Imes filed concurrently with this Application. S&MLF will not  
7 seek to raise the rates of any member of S&MLF for a minimum of six (6) months after the date of  
8 the entry of the order approving its employment. S&MLF reserves the right to seek an increase in  
9 hourly rates in accord with the U.S. Trustee's Guideline on this matter. (*See* Imes Declaration.)

10 No payments have been made or promised to S&MLF for services rendered in any  
11 capacity whatsoever in connection with the Chapter 7 Case. There is no agreement or  
12 understanding between S&MLF or any other entity for the sharing of compensation to be received  
13 for services rendered in or in connection with this Chapter 7 case. No compensation will be paid to  
14 S&MLF except as authorized by order of this Court, after notice and an opportunity for a hearing.  
15 (*See* Imes Declaration.)

## 16 VII. NUNC PRO TUNC EMPLOYMENT

17 The Trustee requests the firm be employed *nunc pro tunc* to May 8, 2018. Pursuant to 11  
18 U.S.C. §327(a) and FRBP 2014(a), trustee's counsel typically cannot recover fees for services  
19 rendered to an estate unless the firm's employment has been authorized by the Bankruptcy Court.  
20 Bankruptcy courts in the Ninth Circuit, however, possess the equitable power to retroactively  
21 approve a professional's valuable but unauthorized services. *In re Atkins*, 69 F.3d 970, 973 (9th  
22 Cir.1995). In *Atkins*, the Ninth Circuit noted there are a number of factors that a bankruptcy court  
23 can consider in determining whether *nunc pro tunc* approval of professional employment should  
24 be authorized. At a minimum, the subject professionals "must (1) satisfactorily explain their  
25 failure to receive prior judicial approval [of their employment]; and (2) demonstrate that their  
26 services benefitted the bankruptcy estate in a significant manner." *In re Atkins*, 69 F.3d at 974 and  
27 975-76, citing *Halperin v. Occidental Fin. Grp., Inc. (In re Occidental Fin. Grp., Inc.)*, 40 F.3d  
28 1059, 1062 (9th Cir.1994); and *Okamoto v. THC Fin. Corp. (In re THC Fin. Corp.)*, 837 F.2d 389,

392 (9th Cir.1988).

In this case, time was spent by counsel reviewing file materials and evaluating potential assets and claims with the Trustee prior to submission of this Application. This pre-Application work was necessary to determine if engagement of counsel by the Trustee (and the expense of an employment application) was even economically prudent and a benefit to the estate. Once the Trustee determined that it was in the interest of the estate to incur the expense of engaging counsel, this Application was prepared and submitted. (*See* Imes Declaration.)

This pre-approval work was undertaken to the extent it was determined to be a benefit to the bankruptcy estate and any fees claimed for this period will still be subject to review and approval by the Court if S&MLF seeks compensation for its services pursuant to 11 U.S.C. §330 and FRCP 2016. (*See* Imes Declaration.)

### CONCLUSION

The Trustee requests that the Court enter an order authorizing the Trustee to employ Schwartzer & McPherson Law Firm as his counsel *nunc pro tunc* to May 8, 2018, to render services as described above, with compensation at the expense of the Debtor's estate to be in such amount as the Court may hereafter allow.

Dated: May 11, 2018.

/s/Jason A. Imes

Jason A. Imes, Esq.

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